

**Submission
No 13**

REVIEW OF ASPECTS OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988

Organisation: Independent Commission Against Corruption South Australia

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The Hon. Leslie Williams MP
Committee Chair
Committee on the Independent Commission Against Corruption

By email: icaccommittee@parliament.nsw.gov.au

Dear Chair

Review of aspects of the Independent Commission Against Corruption Act 1988

Thank you for the invitation to make a submission to the inquiry. I note that the focus of the inquiry is on time standards to finalise reports, the existing mechanism of judicial review, and the role and powers of the Inspector of the New South Wales Independent Commission Against Corruption (the NSW ICAC).

It appears from the Committee's media release on 14 June 2022 that the inquiry follows on from the Committee's previous report, *Reputational impact on an individual being adversely named in the ICAC's investigations* (the report), and that issues to be considered include the length of time between the end of a NSW ICAC hearing and the furnishing of a report, and the effect that this can have on individuals involved.

As noted in the report, my predecessor, the Hon. Bruce Lander QC, made a submission to the previous inquiry. That submission highlighted the significant differences between the respective legislative frameworks of the Commission and the NSW ICAC, and the ways in which the organisations operate. There are now more differences because of amendments made by the *Independent Commissioner Against Corruption (CIPIC Recommendations) Amendment Act 2021*, passed by the South Australian Parliament on 23 September 2021. Because of the differences, I consider that any assistance I can provide your committee is limited and, for that reason, my submission is brief.

Some notable changes brought about by the amending legislation are:

- Misconduct and maladministration no longer fall within the jurisdiction of the Commission. As such, the Commission is no longer able to conduct hearings in relation to serious and systemic misconduct or maladministration, make findings and publish a report of the findings (cf. page 3 of previous submission).
- The circumstances in which the Commission can make a public statement following an investigation and/or report have been significantly reduced under the amended sections 25 and 42 of the *Independent Commission Against Corruption Act 2012* (the Act) (cf. pages 3-4 of previous submission).

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- The insertion of a new Schedule 4 of the Act replaces the current reviewer with an inspector and deputy inspector with broader functions and powers. Schedule 5, however, has not yet been proclaimed to commence.

In relation to timeframes, the Commission currently has a key performance indicator which requires 80% of all corruption investigations to be completed (including internal reporting, finalisation of correspondence to relevant agencies and others, and the compilation of any briefs of evidence) within nine months of the decision to investigate. The Commission met this key performance indicator in the 2021/22 financial year. However, comparing our practices with those of a body which holds public hearings and subsequently prepares and publishes a public report is not particularly useful. I note that the report (at paragraph 3.45) refers to the NSW ICAC Chief Commissioner's evidence, that the length of investigations depends on two factors – complexity and resources, and I agree with that as a general proposition.

Given the differences between the respective organisations and their jurisdiction, I will refrain from commenting on the judicial review issues. In relation to the overseer, my view is that the role and powers of our current reviewer are adequate and appropriate. In my evidence before the South Australian Parliament's Crime and Public Integrity Policy Committee on 22 September 2021, I said, in relation to the proposed amendments:

Then, under the bill, the reviewer would become the inspector and his powers would be significantly increased. Indeed, he would run a small bureaucracy. I have no difficulty with being overseen by a reviewer or an inspector. Where significant powers are given there should be checks and balances—and there are. The reviewer already has open access to all our electronic systems— and indeed any documents. But we are electronic. He can access them remotely, he can view every single document we produce and every single search we conduct he can watch—because it is videotaped—and every examination we conduct he can watch either live or subsequently. That has been the case since the ICAC Act was introduced.

Never in that eight years has either of the reviewers, the Hon. Kevin Duggan AM QC RFD or the Hon. John Sulan QC, identified any abuse of power. These former Supreme Court judges understand investigations, they understand coercive powers and they understand the ICAC Act. They understand the criminal justice system and they have never identified a single abuse of power by ICAC. Has either reviewer ever sought to have additional powers or complained of not having open access to our work? On the contrary. Neither the courts nor the reviewers have ever said we have abused our powers. So what is the point of elevating the reviewers' powers? To me, it smacks of bringing ICAC to heel.

Thank you for providing the opportunity to make a submission to your inquiry. I trust that the information provided will be of assistance to the Committee.

Yours sincerely



The Hon. Ann Vanstone QC
COMMISSIONER

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